

FILED

AUG 12 2019

U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

RECEIVED

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

AUG 12 2019

BY MAIL

United States District Court		District
Name (under which you were convicted): Odell A. Pickett, Jr		Docket of Case No:
Place of Confinement FCI Greenville	Prisoner No: 46650-044	
Movant Odell A. Pickett, JR	V.	United States of America

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Eastern District of Missouri

- (b) Criminal docket or case number (if you know):
- 17-CR-136-HEA

2. (a) Date of the judgment of conviction (if you know):
- 7-24-18

- (b) Date of sentencing:
- 7-24-18

3. Length of sentence:
- 204 months

4. Nature of crime (all counts):
- Carjacking, Brandishing, and Possession of Heroin

5. (a) What was your plea: (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
- I plead guilty to counts 1, 2, 3, 5, and not guilty to counts 4 and 6.

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge Only *N/A*

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No *N/A*

8. Did you appeal from the judgment of conviction? Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation of the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information: *N/A*

(a)(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you file any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes No

(2) Second petition Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Counselor Jones was ineffective for not objecting to the two level enhancement under 283.1(b)(5) as double counting.
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
Count #3 was Carjacking, however, this enhancement was for carjacking. Counsel should not have allowed for double counting, this prejudiced me because this increased my base offense, which increased my sentence.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Counsel did not file notice of appeal; she said it would be a waste of her time.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes

☒ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes

No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes

No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes

No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: Counselor Jones was ineffective for not objecting to the 5 level enhancement under 2B3.1(b)(2)(C) as double counting. (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): This enhancement was for brandishing a firearm, however, I was also charged with a 924(C) for brandishing a firearm. This constitutes double counting. I was prejudiced by Jones ineffectiveness by receiving extra base point increasing my sentence. in Count #3

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes

No

(2) If you did not raise this issue in your direct appeal, explain why: Counsel did not file notice of appeal, she said it would be a waste of her time.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes

No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Counselor Jones was ineffective for not preserving a Davis claim.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Carjacking is not a valid predicate offense for 924(c). By not moving to dismiss count #2, to preserve this claim, Counsel's ineffectiveness prejudiced me because I received 84 additional months. Davis solidifies carjacking is not a valid predicate and Jones should have investigated and preserved this claim.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes", state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Counsel Jones was ineffective for not moving
to dismiss counts #1 and #3 as defective for an absent element
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
There is no element of a weapon in counts 1 and 3, and venue
as required. Under Min Nan Wang, this case has
no federal venue. per se error.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment or conviction, did you raise this issue?
Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?
Yes No

(4) Did you appeal from the denial of your motion, petition, or application?
Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

All claims have not been raised. This is the proper vehicle to raise such claim.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type or proceeding, and the issues raised: _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Felicia A. Jones, Federal PD

(b) At arraignment and plea: " "

(c) At trial: " "

(d) At sentencing: 11

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date of the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C. § 2255 does not bar your motion.* (see below) my judgment should become final on ~~08~~ 8-7-14

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period limitations shall apply to a motion under this section. The limitation period shall run from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: Grant appropriate
Relief, dismiss count 1, 2, & 3.

or any other relief to which movant is entitled.

Odell Picckett
Signature of Attorney (if any)

I declare and (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on 8.6.19
(month, date, year).

Executed (signed) on 8.6.19 (date)

Odell Picckett
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.